Com. of City of New York, 91 N. Y. Sup. 760; *Cook v. Hart,* 146 U. S. 183; *ex parte Reggel,* 114 U. S. 642. By the method of arrest and deportation from Colorado the accused was deprived of all opportunity to invoke judicial aid. Had he succeeded in obtaining a writ of *habeas corpus* in Colorado there is no doubt but that he could have successfully interposed that he was not a fugitive from justice under the terms of the federal statute and Constitution. *Ex parte Smith,* 3 McLean 132. Mr. Justice McKenna in his dissenting opinion says, "The foundation of extradition between states is that the accused should be a fugitive from justice from the demanding state, and he may challenge the fact by *habeas corpus* immediately upon his arrest. If he refute the fact he cannot be removed. *Hyatt v. Cockran,* 198 U. S. 691. And the right to resist removal is not a right of asylum. To call it so in the state where the accused is, is misleading. It is the right to be free from molestation. It is the right of personal liberty in its most complete sense." As Mr. Justice Harlan suggests, Congress might provide for the compulsory return to the state of parties wrongfully abducted from its territory on application of the parties or of the state. But Congress has not seen fit to add to nor change the existing law.

The zeal which prompts the bringing of criminals to justice is commendable. But in the exercise of such zeal the safety of the public demands that no means shall be used which are against the intent of federal law. In the present case a man's right to personal security as guaranteed by the federal law is infringed by a legal abduction. This seems an anomoly. It would technically be a legal crime if there could be such a thing. The inadequacy of the law to prevent such abduction is a menace to the personal security and liberty of all citizens of the United States. In our treaty with Great Britain provision is made assuring every person for whom requisition is made, a hearing before the court issuing the warrant of arrest. Thus opportunity to claim any just defense is given. *Ashburton Treaty* (1842). Considering the great extent of our country such a safeguard would be equally warranted, and would be but a reasonable protection to citizens of any state against being surprised and subjected to deportation, possibly from coast to coast or even to the Philippines.

ON THE RIGHT OF A "WALKING DELEGATE" OR "BUSINESS AGENT" TO ORDER MEN OUT ON STRIKE.

For many years the courts have been endeavoring to find some solid ground on which to decide the respective rights of employer and employee during labor troubles. Adding to this the problem of the rights of interested third parties, sympathizers, would-be patrons and last of all the duties of the belligerents to the general public a situation then arises which requires the utmost care and study in attempting to conserve the rights of all and wrong none.

In the case of *Booth v. Burgess,* 65 Atl. 226, Vice-Chancellor Stevenson of the New Jersey Court of Chancery has contributed a remarkably well-written and clear opinion. In this case a boycott

was ordered, not by anyone directly interested, but on direction of a business agent or walking delegate who was the representative of a federation of building trades numbering about 2,500 men. The number of men who were actually engaged in dispute with their employer was about twenty-five. It was not questioned that the union to which these men belonged, or its members acting individually refused to deal with the complainant. The right of any member to so bind himself that he might, against his own desire, be ordered or "instructed" to leave his employment for the advancement of the aims of independent associations was denied. The decision goes on the right of everyone to a "free market" recognizing, at the same time, the idea of legitimate competition even when carried to great lengths as in the *Mogul v. McGregor* case. (23 Q. B. Div. 598.) The terms "malicious" and "unlawful" which have proved such a stumbling block in former cases have been treated with scant notice in the principal case. In this connection it is important and interesting to notice the successive stages by which the general question of strike and boycott has developed.

In *Allen v. Flood,* App. Cas. 1 (1898), the jury found that 1. Allen "maliciously" induced the Glengall company to discharge Flood and 2. Allen "maliciously" induced the Glengall company not to engage Flood and 3. that damage was done to the extent of twenty pounds. When the House of Lords, on appeal, decided, after much discussion, that Allen was not liable it seems that the most important fact in the case, *i. e.,* whether the men "would knock off" or "be called out" was still undecided. Naturally, if Allen's statement was that the men would (of their own volition) "knock off" he would not be liable, while if it was that they would be "called out" (leaving the question of volition open to inquiry) the case would not be so plain. In *Quinn v. Leathem* (1901) A. C. 506 (atp. 542) Lord Lindley denied emphatically the right of a union to make use of the boycott and in this connection should be considered the dissenting opinion of so great an authority as Mr. Justice Holmes in the case of *Plant v. Woods,* 176 Mass. 504: "I think it is lawful for a body of workmen to try by combination to get more than they are now getting, although they do it at the expense of their fellows and to said end to strengthen their union by the boycott and the strike." It will be recalled that the majority in this case held the strike unlawful on the ground that it was unlawful to use this means of compelling a rival union to amalgamate with them coupled with the fear that violence, etc., would ensue. The *Plant* case can hardly be considered a strong decision. In *Jersey City v. Cassidy,* 63 N. J. Eq. 764, (also decided by V. C. Stevenson) the court was perplexed to know how an injunction would issue to protect men who were interfered with in quest of employment and sought no redress themselves—the would-be employer being the complainant. The same argument was advanced by the defendants as that advanced by the defendants in *Quinn v. Leathem,—supra,* that the complainant could have no redress or protection for injury to the asserted right to deal at will as opposed to damage caused by the breaking of an actual contract. This was met by the "right to

a free market" idea in line with Lord Ellenborough's suggestion of a right to a "possible expectancy." The New York state courts have attempted to decide whether a union may make an agreement with an employer that, on consideration that he will employ only members of a certain union and expel all other tradesmen of the same kind who are not members, it will, in return, keep him supplied with men and ward off strikes for a certain period, a sort of offensive and defensive alliance. In *Curran v. Galen,* 152 N. Y. 37, where non-members of the union were discharged by force of the agreement, Judge Gray says "the effectuation of such a purpose would conflict with that principle of public policy which prohibits monopolies and exclusive privileges." In a later case, *Jacobs v. Cohen,* 183 N. Y. 211, an agreement substantially the same existed but the action was to recover on a note given by the employer as security for his performance of the agreement. Judge Gray there said: "This case is not within *Curran v. Galen.* If it might operate to prevent some persons from being employed by the firm or, perhaps, from remaining in the firm's employment, that is but an incidental feature" and (p. 215) "if they (the employers) regarded it (the agreement to give the note) for their benefit to do so does it lie in their mouths, now, to urge the illegality?" After studying the two cases it is rather difficult to understand why the agreement should be agreeable to public policy when the subject of controversy was between the parties and without the pale when attacked by the injured party directly.

The case of *Temperton v. Russell* (1893) 1 Q. B. 715, was almost analogous to the present case under discussion. There an agent representing a joint committee of a federation of unions coerced an employer by threats of strike to break a contract with complainant who was on the "unfair" list. Lord Esher (p. 725) said "as between themselves the members of the union had a perfect right to do that (threaten to and actually strike, etc.) and to bind themselves to comply with such rules. But these rules cannot bind any person who did not belong to such union" and "there is no distinction between inducing a person *to break* a contract and (inducing him) *not to enter* into a contract." This is the same idea referred to previously as a "probable expectancy."

In *Nat. Prot. Assn. v. Cumming,* 170 N. Y. 331, Parker, C. J., said, "A labor organization is endowed with precisely the same legal right as an individual to *threaten* to do that which it may lawfully do." This case is a clear and avowed affirmation of the right to strike.

A summary of the cases indicates that under the law as now understood, *one* or *one thousand* may unite, whether such union be called "conspiracy" or other technical name, and not only refuse to enter into or continue in the employ of a master but may name the terms on which the relation shall commence or continue. That these terms seem founded on good or bad motives or that they may interfere with the employment of others at that place and under that master is immaterial. It seems to be denied that a number of such unions may, through federation with other trade councils, force the

members who have no direct concern in a quarrel to obey the order of a delegated official to leave or refuse to enter the employment of a black-listed employer—even though these employees may have agreed to this very thing on becoming members of their individual unions. It is of course a well-known fact that such agreements exist among the employers and are generally cheerfully carried out.

The principal case, in line with *Temperton v. Russell* (1893), Q. B. 713, holds that, even if an individual member be willing, that it is against public policy and violating the right of "free market" to allow him to so bind himself.